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ABSTRACT

This paper explores the small claims court as an alternative forum for the instruction of argumentation and suggests a possible format of a course utilizing such a concept. The first section of the paper offers a short history of the small claims court. The second section contains a course syllabus outlining the format of an argumentation course built around the small claims system. The third section is an analysis of the application of certain aspects of argumentation theory in the small claims setting. Examples of assignments and review questions are appended. (RL)

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THE SMALL CLAIMS COURT: AN ARGUMENTATIVE INSTRUCTIONAL ALTERNATIVE

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INTRODUCTION

On July 26, 1978, the New York Times published a story concerning an accountant in California who sued his girl friend in small claims court for $38.00. The reason? She stood him up on a date. Although this particular case may be best noted for its humorous value, it does, however, support the opinion of United States Supreme Court Chief Justice Warren E. Burger. In the closing address to the Conference on Minor Disputes Resolution in 1978, Justice Burger claimed:

> There are many conflicts that fall into today's classification as minor disputes,...which ought to be resolved if we are to avoid the frustrations, tensions, and hostilities that often flow from unresolved conflict. We do not need to call on psychiatrists or clinical psychologists to tell us that a sense of injustice rankles and festers in the human heart and the dollar value of the conflict is not always the measure of tension and irritation produced.[1]

Today, in all but seven states, these minor disputes and the accompanying frustrations, tensions, and hostilities have a potential outlet in the small claims court system. As a mechanism of conflict resolution, the small claims court is, by its very nature, a setting for the practical application of argumentation. The purpose of this paper is to explore the small claims court as an alternative forum for the instruction of argumentation and to suggest a possible format of a course utilizing such a concept.

Richard D. Rieke and Malcolm O. Sillars hinted at such an idea when they wrote: "Today it can be said that the study of argumentation is to the practice of law as political science is to politics or as biological science is to medicine."[2] Indeed, contemporary authors in the field of reasoning have often discussed the relationship between argumentation and law. Austin J. Freeley contrasted judicial debate with other forms of advocacy,[3] as did George W.

Ziegelmueller and Charles A. Dause.[4] J. Michael Sproule gave us insights into the concept of presumption as it applies to the decision rule in law.[5] Douglas Ehninger and Wayne Brockreide discussed the proper uses and tests of evidence from a jurisprudence standpoint,[6] and Wayne N. Thompson analyzed the role of the critic as juryman and judge.[7] Perhaps the most thorough contemporary examinations of the relationship between argumentation and law, however, come from two sources. Stephen Toulmin, Richard Rieke, and Allan Janik devoted an entire chapter of An Introduction to Reasoning to the area of legal reasoning.[8] Likewise, Rieke and Sillars wrote in depth on argumentation in law as part of Argumentation and the Decision Making Process.[9] Yet, despite this apparent canvasing of the topic, few contemporary authors, if any, have scrutinized the potential of the small claims court as an arena in which to observe argument.

The use of small claims for such a purpose would benefit both the field of argumentation and the small claims court system. For many years forensic educators have felt that academic debate and argumentation theory are too far removed from "real life" conflict resolution. In fact, as far back as 1974, conferees to the National Developmental Conference on Forensics held in Sedalia, Colorado, proposed a number of goals to be pursued by teachers of argument. Among them was the notion that argumentation specialists should assume more active roles as critics of public argument.[18] Also included was the idea that new programs should be developed that adapt to decision making in the judicial arena.[11] A discussion of the operation and oral advocacy requirements of the small claims court most certainly offers an avenue for the study of reasoning in a fairly uncomplicated but important public and judicial forum. It also offers to the student of critical thinking a potential training ground in which to observe and to put into practice the theoretical constructs of

argumentation.

To the small claims system, such a proposal could offer a much needed infusion of understanding and scholarship. In testimony before a House Subcommittee, Daniel Meador, former Assistant Attorney General, claimed that the courts have become one of the only means left to settle small disputes, mostly due to the decline of institutions of authority such as churches, elders in the community, policemen on the beat, etc.[12] A scholarly approach to the settlement of small disputes combined with a firm understanding of reasoned discourse could not only improve the small claims process, but also benefit the judicial workings of society in general.

In this paper, we will first offer a short history of the small claims court, followed by a course syllabus outlining the format of an argumentation course built around the small claims system. The third section is an analysis of the application of certain aspects of argumentation theory to the small claims setting.

HISTORY OF THE SMALL CLAIMS COURT

Almost everyone has heard of the small claims court but few realize the system is a convenient and potent tool in the adversary process. The small claims court provides a valuable forum where people can do something about the minor problems and aggravations which frequently infuriate them. The inability to collect rent, get a promised refund, or receive damages for a wrecked car might not be viewed as seriously as solving our national environment or economic problems, but for the individuals involved, the problems are still significant. In the small claims court the individual can compete as an equal with even the largest corporation if the person has the necessary evidence to properly prove

the case.

The first small claims court in this country started in the early decades of the twentieth century because the formal civil adjudicative process had become so complex, cumbersome, and expensive. Civil courts were unable to serve the needs of wage earners or small businesses who had wages or accounts too small to justify the expense and delay of a formal civil proceeding. Optimistically, Roscoe Pound, then Dean of the Harvard Law School, predicted a positive future for the newly ordained small claims court. For you see, Pound, like many others advocating a legal alternative for smaller claims, believed that just because lawyers refused to handle small cases did not mean the cases lacked merit. He said, "May it not be that we have been assuming too lightly that what is unprofitable for the lawyer is unprofitable for the law?"[13]

On March 18, 1913, John Wilson of Cleveland, Ohio became one of the first individuals to win a case against a business in the newly established Conciliation Branch Court. A storage company had lost $10 worth of Wilson's rugs and carpeting. He took his complaint to the court and found a quick but fair settlement without the expense of high attorney fees.[14] Although the small court movement spread beyond Ohio, little developmental work was done after the 1920's.

The small claims court, usually a division of lower court of general jurisdiction, is established by state statute or court rule. In the state of California the small claims court is part of the justice or municipal court, but in other states, it might be part of the peace court or a county court. The maximum dollar amount a plaintiff can claim in small claims court varies depending on the state. Claims average around $500, with Texas permitting only $150, while Indiana allows up to $3,000. Litigants in the state of California

may claim up to $750.

The adversary process is still a fundamental component of the small claims process. The prohibition of lawyers forces disputants to create and deliver an appropriate rationale substantiating the case. Since the small claims court operates informally, the judge permits significant discretion on the rules and admissibility of the evidence which results in the judge playing a more active role in the small claims court than in other legal settings. The small claims court, therefore,offers a quick, inexpensive means of debt collection to the public.

COURSE OUTLINE

In this course, students study the fundamental constructs of argumentation through practical observation of the reasoning employed by litigants using the small claims court to settle their differences. This course, "Argumentation and the Small Claims Court" was first taught at Humboldt State University in the spring of 1980. The following material reflects, with modifications, the postulates, the design, the discussion topics, the readings, and the assignments used in the course.[15] The topics selected for the course could vary, depending on the interest and background of the instructors.

Course Postulates

1. The course is designed to introduce students to the principles of reasoned inquiry including argumentative forms, evidence, case building, and delivery elements.

2. The course is designed to introduce the student to the small claims court process including an understanding of how to file a claim, the court

appearance, the appeal process, and the role of the judge in the legal setting.

3. The course is designed to permit students to evaluate argument in a natural laboratory by observing and analyzing the small claims process.

Format

Designed as an undergraduate course, students meet twice a week for three hours during a ten week quarter. Typically, three types of students are attracted to the course: undergraduate Speech Communication majors, prelaw students, and students interested in knowing more about the small claims process. The format of the course includes both lectures by the instructor, and student-centered discussions. The class is required to visit the small claims court at least five times.[16] For each topic covered in the course, the instructor lectures for one period and a second period is devoted to a discussion organized around study questions or sample small claims court cases.

COURSE TOPICS

A General Overview of Small Claims Court

In this first unit of the course, the question, "What is the small claims court?" is answered. Many of the students who enroll in the course have an inadequate understanding of the U.S. legal system and it is necessary to supply a basic foundation of jurisprudence in order for the class to understand the court system.

In addition, information on what types of cases may be filed in small claims court is discussed in this unit. The small claims court, sometimes tagged as "The People's Court" provides consumers, businesses, landlords, and tenants with a way of resolving minor disputes effectively, efficiently, fairly,

inexpensively, and expeditiously. Generally, the small claims court cases can be classified into one of the following three typologies: (1) disputes between an individual and a business; (2) disputes between individuals, such as neighbors, family, or landlord and tenant; or (3) a dispute between an individual and an organization. A case against the government would fit into this last category.

Discussion questions:

(1) Who can sue in small claims court?

(2) Who can be sued in small claims court?

(3) Should one sue in small claims court or a higher court?

(4) Where does one file the lawsuit?

(5) How much time does one have to file your lawsuit?

Suggested Reading:

"The Role of the Small Claims Court." Consumer Reports. Nov. 1979, pp. 666-670.

This report details current statistics and recent efforts to evaluate the small claims process.

Filing a Small Claims Court Case

In order to analyze the use of argumentation in the small claims court, it is necessary to understand how the small claims court works. Students are required to read the section of California Code of Civil Procedure on small claims court and the California bench book for court clerks on the operation of the small claims court. This unit takes four class periods to complete. Students are required to complete two assignments during this unit. The first assignment involves defining legal terms used in small claims court such as trial De Novo, venue, tort, and Subpena Duces Tecum. For a complete list of the words, please see Appendix A. The students also answer a series of

questions about the process of filing an action and must analyze fictitious cases to determine if the claim has merit. For example, John Doe approaches you for advice. He was sued three months ago for $300 when someone tripped on a wire on his property. He tells you the same person is now suing him again for $200 more for new medical costs as a result of the tripping. What will you advise him to do? A full list of the questions students must answer is located in Appendix B.

Reading:

California's Code of Civil Procedure, Sections 116-117.

This section of the Code outlines all rules related to small claims court.

Small Claims Manual Committee, Manual of Procedures in Small Claims Cases. The Association of Municipal Court Clerks of California, 1978.

This is the bench book that the judge and the clerk use in small claims court. It is much easier to understand than the Code.

Characteristics of Argument

Aspects of formal logic and reasoning are described in this unit. Specific attention is given to describing Toulmin's model of argument. The students also study the various categories of argument, such as causal, deductive, sign etc. Students are required to brief a small claims appeal case and analyze the reasoning used by the judges in the decision. See Appendix E for a complete copy of the assignment. Students are required to visit the court five times and write an analysis paper on their visits. See Appendix D for a copy of the assignment.

Discussion questions:

(1) Which type of argument is used most frequently by claimants in small claims court?

(2) How does a written court decision differ from the informal argument

used in small claims court?

(3) Does the highly rule governed structure of the courtroom limit the type of argument which can be used in a small claims action?

(4) Does the adage "the search for truth" apply to the small claims court?

Suggested reading:

Rieke, Richard D. and Malcom O. Sillars. Argumentation and the Decision Making Process. New York: John Wiley, 1975, pp. 73-88.

Formal logic is briefly discussed and different types of arguments are outlined using Toulmin's model of argument in this chapter.

Toulmin, Stephen, Richard Rieke, and Allan Janik. An Introduction to Reasoning. New York: MacMillan, 1979, pp. 203-227.

The authors discuss law as a forum for argument, the nature of legal issues and decisions, and the characteristics of legal argument.

Building the Case

In this unit students identify the characteristics of an effective small claims case. Emphasis is placed on how litigants should organize, document, and deliver a case in small claims court. The argumentative principles of prima faciality, burden of proof, presumption, forms of evidence, and tests of evidence are discussed.

Discussion questions:

(1) What sequencing of arguments should be used when structuring a case for small claims court?

(2) What are the rules of admissibility of evidence in small claims court?

(3) Should claimants prepare a written statement explaining their position on the case.

(4) Where should eye contact be directed during the small claims proceeding?

(5) Does the plaintiff have an advantage in a small claims court case?

(6) How do prima facie, burden of proof, and presumption apply to the small claims proceeding?

(7) Should lawyers be permitted in the small claims court?

Suggested reading:

Rieke, Richard D. and Malcom O. Sillars. Argumentation and the Decision Making Process. New York: John Wiley, 1975, pp. 97-112; 157-171.

The authors discuss forms of evidence and the building of an argumentative case. The material provides a good foundation on general argumentative requirements, such as obligations of a case, sequencing of arguments, audience orientation, and general background of evidence.

Ruhnka, John C. and Steven Weller. Small Claims Court: A National Examination. Williamsburg: National Center for State Courts, 1978.

This work is an excellent two-year study of fifteen small claims courts in the United States. General statistical information on the difference between courts and satisfaction of litigants is summarized in the book

Role of the Judge

The adversary process in small claims court differs from other courts. Since lawyers are frequently prohibited from appearing in court, the judge can play a more active role in the litigation process. In this unit the students study the role of the judge as a decision maker in the small claims court. In addition, a judge addressing the class on his or her perceptions of the small claims court process always interests students.

Discussion questions:

(1) What influence will the plaintiff's or defendant's attractiveness have on the decision of the judge?

(2) Will dress or appearance influence a judge in a small claims action?

(3) How is evidence evaluated in the courtroom?

(4) What decision standard is used in small claims court?

(5) How is the role of the judge different in the small claims court than in other civil proceedings?

Suggested reading:

Thompson, Wayne N. Modern Argumentation and Debate: Principles and Practices. New York: Harper and Row, 1971, pp. 323-327.

Thompson describes the approach of the legislator, juryman, critic to judging.

Conflict Resolution and the Small Claims Court

In this unit, students discuss the limitations of the small claims court process as a means for conflict resolution. The small claims court is not an automatic panacea for the many minor social ills confronting people. Many times individuals want to find solutions to their problems but find the small claims court either a distasteful or an inappropriate avenue to correct injustices. Various states and localities are initiating alternative trial programs to help resolve minor conflicts between parties and are searching for methods to improve the small claims court process.

Perhaps the following example illustrates the need for better programs, beyond the small claims court, to assist in conflict resolution. Suppose your next door neighbor lets his dog out at night and the barking dog keeps you

awake. After listening for hours to the dog's howl, you walk next door, and request that the dog no longer be left out overnight. During the conversation tempers flair, and you set sail with a punch aimed at your neighbor's chin.

Obviously, the small claims court is really not prepared to help solve this problem. Many state authorities have realized the shortcomings of the small claims court to adequately settle neighborhood type disputes and have authorized pilot programs to find better solutions to the problem. Innovative projects have been started in Florida and California using Neighborhood Justice Courts. Under these programs, volunteer lawyers serve as mediators, or in some cases arbitrators, and assist the disputing parties to search out a compromise solution before seeking legal redress.

Discussion questions:

1. What role does argument play in conflict resolution?
2. How do you think the small claims process can be improved to meet the needs of the people?
3. What can be done by local groups, businesses, or government to help correct minor conflicts between people?
4. In your opinion, does a lack of conflict resolution significantly increase crime?

Suggested reading:

Bundy, McGeorge, ed., New Approaches to Conflict Resolution. New York, Ford Foundation, 1978.

The report considers a wide variety of experiments and research proposals finding better ways to handle disputes outside of the legal area.

Chamber of Commerce of the United Nations. "Up with Consumers: A Consumer Redress Program"; rpt. U.S. Cong. House. Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on the Judiciary. Dispute Resolution Act. 95th Cong. 2nd Sess. Washington, D.C.: GPO, July 27-August 2, 1978, pp. 405-416.

Case studies of Whirlpool and Giant Food Companies complaint service.

Chamber of Commerce of the United States. "Up with Consumers: Consumer Complaint, Mediation-Arbitration Programs."; rpt. U.S. Cong. House. Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on the Judiciary. Dispute Resolution Act. 95th Cong. 2nd Sess. Washington, D.C.: GPO, July 27-August 2, 1978, pp. 417-435.

Case studies of workable mediation-arbitration systems. The two case studies, Seattle Better Business Bureau and Major Applicance Consumer Action Panel, are reviewed.

Beresford, Robert and Jill Cooper, "A Neighborhood Court for Neighborhood Suits." Judicature, 61 (1978), 7-13.

The article summarizes the results of the experimental community court in San Jose. California. The program was designed to help poorer people use the court to settle their problems.

American Bar Association, "Report of Pound Conference Follow-Up Task Force." Griffin B. Bell, Chair; rpt. U.S. Cong. House. Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on the Judiciary. Dispute Resolution Act. 95th Cong. 2nd Sess. Washington, D.C.: GPO, July 27-August 2, 1978, pp. 282-342.

The National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice was appointed to insure that the ideas of the conference would be carefully considered by potential implementing organizations and agencies.

APPLICATION

In this section, we isolate argumentation concepts and analyze their applicability to the small claims court. The areas of analysis are: burden of proof and presumption, prima faciality, and the role of the critic in conflict resolution.

Burden of Proof and Presumption

The terms "burden of proof" and "presumption" are so often used in the field of argumentation that we tend to forget the initial frustrations involved in coming to grips with these terms. Who can forget the undergraduate who, when first introduced to the term presumption asked, "Presumption? Does that mean we are presumptuous?" In order to sufficiently allay such misconceptions, it is necessary that the student not only be taught the theoretical underpinnings of the concepts but also be allowed to observe how these concepts can affect the outcome of an argument.

In the court of law, it is assumed that all people are presumed innocent until proven guilty. The presumption, therefore, lies with the defendant. Likewise, in academic debate, presumption lies with the status quo, traditionally the negative. The real life implications of these designations can easily be viewed in the small claims court.

The following is the case of Abbalo v. Ulbrey, heard at the Arcata Justice Court in Arcata, California.

Abbalo v. Ulbrey

Judge: Mrs. Abbalo, you claim that Mr. Ulbrey owes you $80 for room and board. Why do you feel the defendant owes that money? (pause) Why do you feel he owes you the money?

Mrs. Abbalo: He owes me.

Judge: O.K., you have to tell me why.

Mrs. Abbalo: Why? He owes me the money.

Judge: O.K., just a minute. When did he move in?

Mrs. Abbalo: September the 24th.

Judge: Of 1980?

Mrs. Abbalo: Yes.

Judge: Is he still there?

Mrs. Abbalo: No.

Judge: When did he move out?

Mrs. Abbalo: (Long pause) The first time he came in ...

Judge: Now just a minute, just a minute, I'm not concerned if he is bad, good, or indifferent. What I simply want to know is when did he move out?

Mrs. Abbalo: October.

Judge: Do you know what day in October?

Mrs. Abbalo: No.

Judge: Do you know approximately what day in October?

Mrs. Abbalo: No.

Judge: Now, what was the agreement when he went in?

Mrs. Abbalo: He was to pay me $75 every two weeks.

Judge: $75 every two weeks. Did he pay anything starting out?

Mrs. Abbalo: Yes.

Judge: How much did he pay?

Mrs. Abbalo: $75.

Judge: O.K. Did he pay ...that was for the first two?

Mrs. Abbalo: Yes.

Judge: Did he pay anything for the second two?

Mrs. Abbalo: No.

Judge: Did he pay anything ever?

Mrs. Abbalo: No.

Judge: Did he ever tell you a reason why he wasn't there?

Mrs. Abbalo: No. I told him to pay else I was going to go to court.

Judge: Did you order him out? Did you evict him or what?

Mrs. Abbalo: Yes I did.

Judge: When?

Mrs. Abbalo: October.

Judge: O.K. Just be quiet. What do you have to say about this?

Mr. Ulbrey: Well I...

Judge: When did you move out?

Mr. Ulbrey: Uh?

Judge: When did you move out?

Mr. Ulbrey: I haven't got the date. I was only there for two weeks.

Judge: You don't have any idea when you moved out?

Mr. Ulbrey: No.

Judge: Do you know when he moved out?

Mrs. Abbalo: (No reply)

Judge: Well from uh...September 24th...How many days in September?

(The clerk and judge count the days using a calendar.)

Judge: Was he out on the eighth of October?

Mrs. Abbalo: No.

Judge: How do you know that?

Mrs. Abbalo: I know.

Judge: The burden is upon you. And all I hear you saying is that he moved out in October but I don't know when. He is saying that he was only there two weeks. Two weeks would be the eighth of October.

Mrs. Abbalo: He was there. Were you there when the window was broke?

Judge: What day did you move out?

Mr. Ulbrey: I don't know what day it was. I was there for two weeks. Judge, that's the truth. I paid $75 when I moved in, and I moved out two weeks later.

Judge: Mrs. Abbalo. You are going to have to do better or you will lose this case now.

Mrs. Abbalo: Three weeks.

Judge: You don't have the information with you today?

Mrs. Abbalo: (No response)

Judge: Are you working?

Mr. Ulbrey: Yes.

Judge: Did you lose work to come here today?

Mr. Ulbrey: No.

Judge: Ma'am, you are suppose to be prepared when you come to the court. Now if he was there for a week, why are you charging him $80?

Mrs. Abbalo: He was there I would say almost over a week.

Judge: O.K. You have $75 every two weeks. He paid for the first two. He was there for another week. Is that what you are saying?

Mrs. Abbalo: Yes, almost three.

Judge: O.K. but for the third week...he paid you for the first two. Right?

Mrs. Abbalo: Yes.

Judge: So we are only talking here about one more week. When you show me he was there one more week we are only talking about one more week. Right?

Mrs. Abbalo: No, we are talking about almost three.

Judge: He moved in on September 24th. Right? Two weeks means he went to October 8 and he paid you for that. Right? And he stayed over one more week. Right? Then why are you trying to sue for $80?

Mrs. Abbalo: He stayed almost three weeks.

Judge: But he paid you for the first two now.

Mrs. Abbalo: He was there five weeks.

Judge: Now you are saying five weeks now.

Mrs. Abbalo: Right

Judge: Not one week.

Mrs. Abbalo: Yes.

Judge: Well five weeks Ma'am would have put him up into November.

Mrs. Abbalo: He was there five weeks.

Judge: I am sorry Ma'amI can't decide on how to evaluate the time. You have failed in your burden to show me when he moved out. I hear a week at one time or I hear five at the next. I certainly can't tell. The burden is upon you. Claim is denied.

Mr. Ulbrey: Thank you.

Mrs. Abbalo, the plaintiff, has sued Mr. Ulbrey for the sum of $80. Mr. Ulbrey, as the defendant, has the presumption. In the small claims system, as in all civil cases, the verdict is based on a "preponderance of evidence."[17] Under this criteria, the judge must "believe that it is more probable that the facts are true or exist than they are false or do not exist."[18] Furthermore, preponderance must, in small claims, be weighed in two general areas: First, the plaintiff must establish the defendant's liability. Second, the plaintiff must justify the damages resulting from the defendant's actions.[19] If one or the other of these areas is not adequately proven with a preponderance of evidence, the claim is denied and the defendant wins.

This is precisely what happened in the case of Abbalo v. Ulbrey. Despite the fact that Mr. Ulbrey appears to have been blatantly unprepared for his hearing, the claim against him was denied. Neither he nor Mrs. Abbalo presented evidence verifying his date of departure. Neither of them could back their respective claims in any way. The result was a stand-off and, because Mr. Ulbrey had the presumption, the claim was denied.

To the student of argumentation, this kind of observable action allows the concept of presumption to come to life. The student can observe that Mr. Ulbrey stood on a figurative piece of argumentative ground. The student can also see that Mr. Ulbrey won not through any action on his part, but rather through a lack of proper action on the part of Mrs. Abbalo. It becomes clear then, that Mrs. Abbalo was denied her claim because she failed to overcome presumption.

This failure, of course, was a failure to uphold the burden of proof. In this instance, Mrs. Abbalo's burden was two-fold: to prove liability, and to justify the damages. In order to provide a preponderance of evidence on

liability, all Mrs. Abbalo had to do was prove that Mr. Ulbrey moved out after the eighth of October. This she failed to do. At best, she asserted that he was inhabiting her rental unit until some rather nebulous time in October. At worst, she contradicted herself by later asserting that Mr. Ulbrey had not moved out until November. In either case, her failure was obvious to the judge, who twice informed Mrs. Abbalo that she had "failed to uphold her burden."

This failure to prove liability not withstanding, Mrs. Abbalo also shirked her second burden; that of justifying the damages she claimed. Clearly if Mr. Ulbrey had inhabited her rental for only one additional week he owed no more than $37.50. Yet, when the judge asked her repeatedly how she could justify an $80 claim, Mrs. Abbalo could respond only with "He owes me."

Mrs. Abbalo's failure to uphold her burden of proof, along with the consequences of that failure, are easily apparent. In this instance, the small claims court proved a ready forum for the observation of practical argument. It also provided for keen insight into two fairly complex argumentative concepts. It is our estimate that, in this instance, the small claims court would have enhanced a student's grasp on the concepts of burden of proof and presumption.

Prima Faciality

The instruction of the concept of prima faciality is well facilitated by the use of the small claims court, ostensibly for two reasons. First, the concept has its origins in the judicial system, as do many argumentation terms.[20] Second, the nature of the decision rule in small claims lends itself to a simplistic explanation of the judgment. This allows the student to come to grips with the term by way of an easily understood, real life argument.

The student must first understand what constitutes prima faciality in a given instance. In a broad sense, we can define a prima facie case as "a case a critical judge would consider strong enough to stand unless or until refutation is offered against it."[21] Yet, what does this truly entail? Is it enough for the plaintiff (or the affirmative in academic debate) to simply file the claim and appear in court at the designated time?

In the small claims court it becomes readily apparent that it is not enough simply to appear. As was outlined in the section on burden of proof and presumption, the requirements for a prima facie case are two-fold. The plaintiff must prove liability and must justify the amount of the damages. The need for a prima facie case is demonstrated everyday in the small claims setting. We need only refer back to the case of Abbalo v. Ulbrey. This is a classic example of failure to present a prima facie case. Such a failure is, theoretically, a guarantee of defeat. As Thompson states, "Establishing a prima facie case is no guarantee of final victory, ... but failing to do so insures defeat--at least in theory. If there is no prima facie case, the negative has no obligation and theoretically wins even though it remains silent."[22] This is precisely what transpired in Abbalo v. Ulbrey. Mr. Ulbrey, for all wants and purposes, remained silent. Yet, because Mrs. Abbalo lacked a prima facie case, her claim was denied. Mr. Ulbrey, through no work of his own, won the argument.

The small claims court provides numerous other opportunities to observe the practical application of the theoretical construct of prima faciality. These opportunities are realized in the massive number of default cases which occur in small claims. Recently, the National Center for State Courts made a random sample of 5,324 cases from fifteen courts in fourteen different states. Their studies indicated that 44 percent of small claims cases were defaults, a

significant portion of the caseload.[23] Defaults provide an opportunity to observe the legal requirement for prima faciality in a situation where there exists no counter argument.

In the case of the Department of Transportation of the State of California v. Richard Earl Casey, we are presented with such a default judgment. The hearing went as follows:

Judge: You are asking for $259.66 for two sections of wrecked guardrail and two blocks as result of the accident.

Representative: Yes.

Judge: (Looking at documentation provided by the Department of Transportation.)
This is a true and accurate amount due and owed as a result of damages received in that accident?

Representative: Yes.

Judge: Decision for the plaintiff in the requested amount plus court costs.

Two rather poignant criteria emerge from the case. First, the decision was not rendered automatically. A series of questions was asked of the plaintiff by the judge before the decision was announced. Second, the questions explicitly determine whether the plaintiff can substantiate two issues: The first two questions asked by the judge establish the claim and the liability of Mr. Casey. The last question deals with the issue of the amount claimed as damages. The documentation provided by the Department of Transportation was able to stand unless refutation was offered against it. As no counter arguments were presented, decision was held for the plaintiff.

Through the two examples given, the concept of prima faciality has been examined from two different perspectives. The student studying argumentation

through the small claims court would have had the opportunity to analyze the application of a theoretical construct to a real world argument. Furthermore, the student could have ascertained the effect, in terms of basis for judgment, of differing degrees of plaintiff preparedness. Other small claims cases could potentially offer an even more varied look at prima faciality.

The Critic in Conflict Resolution

Perhaps the most fascinating parallel to be drawn between the field of argumentation and the legal system involves the role of the critic or judge. Ever since the celebrated Wells-O'Neill controversy raged through the pages of the Quarterly Journal of Speech, scholars in the argumentation field have studied the relative merits of the juryman or legal approach to judging academic debate.[24] Nonetheless, few of these scholars would quarrel with the premise that significant similarities exist today between the decision making process in legal argument and that in academic debate. It is this similarity that allows the student of critical thinking to observe the small claims court as a laboratory of conflict resolution.

The small claims court judge, like the critic of academic debate, must put forth a decision. To do so, both must weigh the evidence presented to them. In the small claims setting, unlike other legal settings, the judge may take an active role in soliciting information from the litigants.[25] Many small claims judges feel that this activist role allows them to be much more efficient than rigid formal trial procedures in getting quickly to the heart of the dispute. It enables them to question litigants and witnesses in order to draw out relevant facts and clarify conflicting testimony.[26]

It is this same judicial activism that allows the argumentation

student to observe and analyze what the judge feels are the critical issues of the hearing. In both academic debate and legal advocacy situations other than small claims, the observer may be able to form an opinion on what the critical issues are, but either cannot follow the decision maker's train of thought or cannot be sure about what the deciding issues actually are. In small claims though, it is usually apparent what line of reasoning the judge is pursuing. Additionally, in many instances, the judge will announce the decision by stating the rationale behind it. This permits the observer to compare his or her analysis of the case versus the reasoning of the judge.

The small claims setting, even more so than most academic debates, also has a fairly structured criteria for judgement. The decision rule is based on a preponderance of evidence, while the plaintiff's burdens are clear and concise. The student observer, therefore, can analyze the argument by measuring evidence, rationale, and testimony against the given criteria. The only influencing factor missing to the student observer is the letter of the law. However, this is not quite the handicap it may at first appear to be. First, most litigants are as unaware of the legal rules affecting their case as are the argumentation students who are observing.[27] Second, the judge will often ask questions which pertain specifically to the legal question at hand. In fact, some may even state the point of law, then ask the litigants how they can either prove or disprove the claim as it applies to the given legal question. It is the judge who has the expert knowledge of the law in small claims and it is, therefore, up to that individual to disperse whatever legal information is needed.

An interesting side note on the role of the critic is that most small

claims judges do not allow litigants to cross-examine one another.[28] Judges feel that this kind of procedure tends to lengthen trials unnecessarily and keeps other litigants waiting for their hearing to begin. As Judge Ronald D. Roland of the Arcata Justice Court states, "The last thing we need here is a bunch of litigants all pretending to be Clarence Darrow."[29] Additionally, direct confrontation of this nature could potentially lead to more heated emotions between the two parties, which would be in direct opposition to the court's purpose of settling disputes.

However, despite the lack of cross examination (or perhaps because of it) the argumentation student is able to grasp a fairly significant portion of the issues by observing the judge in the small claims process. The student can follow lines of reasoning and better understand the decision making procedure. In fact, since many judges are willing to discuss the trials heard on a given day, the student can come to a thorough understanding of the arguments involved. Few practical exercises in critical thinking can provide such a thorough analysis as the small claims court.

SUMMARY

In this paper we have discussed the potential of the small claims court as a forum for the instruction of argumentation. The information provided can be used in a vast number of ways and in a variety of different settings. If your University cannot afford the expense of offering a course similar to the one outlined today, you might try to incorporate some of the precepts into your other teaching assignments. We found that students enjoyed the visits to the small claims court and were constantly amazed that so many individuals were paranoid of and poorly prepared for

their court experience. In addition, since increasing gas prices are shrinking the intercollegiate forensic dollar, Directors of Forensics might establish an on-campus or community program where students would offer assistance to litigants wishing to file a small claims case. In our minds the small claims court offers numerous possibilities for further adaptation.

REFERENCES

[1]American Bar Association, "Report on the National Conference on Minor Disputes Resolution," May 1977; rpt. U.S. Cong., House, Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on the Judiciary, Dispute Resolution Act, 95th Cong., 2nd sess. (Washington, D.C.: GPO, July 27-August 2, 1978), p. 234.

[2]Richard D. Rieke and Malcolm O. Sillars, Argumentation and the Decision Making Process (New York: John Wiley and Sons, 1975), p. 229.

[3]Austin J. Freeley, Argumentation and Debate: Rational Decision Making, 4th ed. (Belmont: Wadsworth Publishing, 1971), pp. 16-17.

[4]George W. Ziegelmueller and Charles A. Dause, Argumentation: Inquiry and Advocacy (Englewood Cliffs: Prentice-Hall, 1975), pp. 146-147.

[5]J. Michael Sproule, Argument: Language and Its Influence (New York: McGraw-Hill, 1980), pp. 92-94.

[6]Douglas Ehninger and Wayne Brockreide, Decision by Debate, 2nd ed. (New York: Harper and Row, 1978), pp. 56-57.

[7]Wayne N. Thompson, Modern Argumentation and Debate: Principles and Practices (New York: Harper and Row, 1971), pp. 324-326.

[8]Stephen Toulmin, Richard Rieke, and Allan Janik, An Introduction to Reasoning (New York: MacMillan, 1979), pp. 203-227.

[9]Rieke and Sillars, pp. 229-253.

[10]James McBath, ed., Forensics as Communication: The Argument (Skokie: National Textbook Co., 1975), p. 13.

[11]Ibid, p. 20.

[12]James Meador, Dispute Resolution Acts, p. 71.

[13]Mark Green, Dispute Resolution Acts, p. 71.

[14]Ibid.

[15]Preliminary research on the small claims courts was made possible through a California Affirmative Action Faculty development grant. The course was initially team taught by Peter Coyne and Suzanne Larson. Dr. Coyne, in addition to his background in communication, also holds a degree in jurisprudence. Thus, the course had a strong legal orientation.

[16]Arcata, the city where Humboldt State University is located, has a small claims court as does Eureka, a neighboring city five miles distance. Students are required to visit both the Arcata court and the Eureka court. Visiting both courts enables a more in-depth discussion of the different styles of the court. Generally, it is better to visit the courts as a group because later class discussion is more meaningful if the students have a common observation foundation.

[17]John C. Ruhnka and Steven Weller, Small Claims Court: A National Examination (Williamsburg: National Center for State Courts, 1978), p. 22. In addition, see John C. Ruhnka, Housing Justice in Small Claims Court (Williamsburg: National Center for State Courts, 1979), p. 45.

[18]J. P. McBaine, "Burden of Proof: Degrees of Belief," California Law Reporter, 32 (1944), p. 262.

[19]Ruhnka, p. 45.

[20]Rieke and Sillars, p. 20.

[21]Ehninger and Brockriede, p. 138.

[22]Thompson, pp. 10-11.

[23]Ruhnka and Weller, p. 129.

[24]Thompson, p. 325. See also Hugh N. Wells, "Judging Debates," Quarterly Journal of Public Speaking, 3 (1917), 336-345; Hugh N. Wells and J.M. O'Neill, "Judging Debates," Quarterly Journal of Speech Education, 4 (1918), 76-92; Hugh N. Wells, "Coaching Debates," Quarterly Journal of Speech Education, 4 (1918), 179-183; Hugh N. Wells, "A Final Reply," Quarterly Journal of Speech Education, 4 (1918), 398-409; Hugh N. Wells, "Comment on Professor O'Neill's Latest MSS.," Quarterly Journal of Speech Education, 4 (1918), 422-427. In addition see J.M. O'Neill, "The Juryman's Vote in Debate," Quarterly Journal of Public Speaking, 3 (1917), 346-355; Wells and O'Neill loc.cit.; J.M. O'Neill, "Comment on Judge Well's Last MS.," Quarterly Journal of Speech Education, 4 (1918), 410-421.

[25]Ruhnka and Weller, pp. 19-21.

[26]Ibid., p. 19.

[27]Ibid., pp. 176-177.

[28]Ibid., p. 20.

[29]Ronald D. Roland in an interview February 13, 1981.

APPENDIX A

DEFINITION OF LEGAL TERMS ASSIGNMENT

Please define and become familiar with the following legal terms: tort, jurisdiction, venue, unlawful detainer, attachment or garnishment, declaration and order, trial De Novo, plaintiff, defendant, Guardian ad Litem, Subpena Duces Tecum, subpena, continuance, default, request for dismissal, writ of execution, notice of appeal, motion to vacate small claims default judgment, and claim of exemption. The following two sources may be used to discover the definitions of the above terms: California's Code of Civil Procedure, Sections 116-117, and Small Claims Manual Committee, Manual of Procedures in Small Claims Cases (The Association of Municipal Court Clerks of California, 1978).

APPENDIX B

SMALL CLAIMS COURT REVIEW QUESTIONS

In order to check your understanding of how the small claims process operates, please answer the following questions. Please be sure to cite the page and section from the "California Code of Civil Procedure," or The Manual of Procedures in Small Claims Cases justifying your answer.

(1) Can a defendant file a claim for more than $750.00?

(2) Does a peace officer get paid personally to testify before the small claims court?

(3) How must notice of continuance be given to the defendant(s)?

(4) If a defendant loses will he/she have to pay witness costs?

(5) Which court will hear a trial De Novo?

(6) What is a motion to vacate? How is it used by the defendant?

(7) How long does a person have to appeal a small claims judgment?

(8) Sally Call is a private in the army. She was a defendant in a small claims case and defaulted. Can the plaintiff still collect the judgment?

(9) John Smith wants to amend his claim by adding an additional defendant. Can he do so? If so, how?

(10) What must accompany a Subpena Duces Tecum?

(11) What does it cost to issue a writ of execution? For a motion for a change of venue?

(12) You are a plaintiff in a small claims court action, can you legally serve a witness a subpena?

(13) A client approaches you and tells you he/she will not respond to a subpena which he/she has received. You attempt to tell him/her of the penalities for failure to appear. What are the possible penalities?

(14) You wish to file an unlawful detainer action in small claims court. What are the four conditions that must be met?

(15) You rent a Ryder truck and while driving it get involved in the worst accident of your life. You are injured and since you were not at fault decide to sue. What will you need to do in order to file a claim?

(16) Your newsboy (age 16) throws your Sunday newspaper through your front window (yes, it was closed and the glass broke). Can a claim and order be served on the newspaper boy?

(17) You sign a contract (subject to the Retail Installment Sales Act) with a Eureka furniture company. They fail to live up to the contract, so you decide to sue. Explain why you can or cannot sue in the Arcata Justice Court.

(18) As a defendant you lose in a small claims court action. You appeal to the Superior Court and lose. You wish to take the appeal one step further and appeal it to the Court of Appeals. What papers must you file? What costs must you pay?

(19) John Doe approaches you for advice. He was sued three months ago for $300 when someone tripped on a wire on his property. He tells you the same person is now suing him again for $200 more for new medical costs as a result of the tripping. What will you advise him to do?

(20) Jack's landlord was mad because Jack failed to move when he said he would. A week later, Jack's landlord rammed his car into Jack's car on the right hand side. Another week later he rammed Jack's car on the left side. Total damage to Jack's car is $1076. What should Jack do?

(21) John Smith receives a nasty bite from a neighbor's dog. Since this is a tort action, can he sue in small claims court?

(22) John Smith and his sister Alice were injured in the same auto accident. John suffered $740 and Alice $600 in medical expenses. If the limit in small claims court is $750, should they go into Superior Court?

(23) Your sister and you are defendants in a small claims court action. You both decide to counter claim. Under what conditions could your sister serve the claim and order? After you both file the counter claim can the plaintiff file a written request to get the case dismissed? If you lose the counter claim can you appeal?

APPENDIX C

MOCK TRIAL CLAIMS COURT ASSIGNMENT

Aside from academic debate, students studying the theory of argument seldom get the opportunity to practice or refine their persuasive skills. In this assignment, students are required to argue a mock small claims case during class. The class will be divided into groups of two and assigned an actual small claims case to argue in front of the class. One of the group members will assume the role of the plaintiff and the second group member will support the position of the defendant. Each person will speak twice. In the first speech students will outline their major arguments in the case. In the second speech students will refute the opposition's arguments. The class will act as the judge and, therefore, will be permitted to ask questions during a designated time period. The time limits and order of the speeches include: opening statement by the plaintiff (5 minutes); opening statement by the defendant (5 minutes); cross questioning by the class (7 minutes); closing statement by the plaintiff (4 minutes); and closing statement by the defendant (4 minutes). Each group will be given background data on an actual small claims case. No group will have the same case. The following small claims court case serves as an illustration of the type of cases used in this assignment.

Angeli vs. The Works Inc.

Facts of the case.

Desiree Angeli purchased a set of Pioneer speakers for her car stereo in Ohio, and paid to have them installed in her 124 Spider Fiat sports car. The speakers were installed improperly but because she was moving to Eureka, California, she was unable to have the speakers fixed. After arriving in Eureka, Ms. Angeli took her car to The Works Inc., a stereo business in Eureka, and requested that "the speakers be installed properly." She paid The Works $35.00 for the job.

One month later, due to the rain dripping down through the window, her speakers were ruined. Ms. Angeli discovered that no cup had been installed over the speakers for protection against the rain. She called other stereo dealers in Humboldt County and discovered that it was standard practice when installing speakers in the doors of sports cars to place protective cups over the speakers due to the large amount of precipitation in the area.

Ms. Angeli contacted The Works and requested replacement of her speakers. The owner indicated that he would install a new set of speakers free if Ms. Angeli purchased new speakers from his business at cost. The owner of The Works, Mr. Pat Higgens, also told her that many speakers can not be protected because the proper size cup is not manufactured. However, this is not true. Pioneer speakers do manufacture two different sizes of protective cups which can be purchased for under $2.00 each. The Works' owner also indicated that their workers do not generally install the protective cups in

most cars but do install the cups in sports cars when requested.

Ms. Angeli decided to sue in the small claims court in Eureka for the installation fee and the price of her speakers, a total of $135.00. In an attempt to try and solve the problem before going to the court, she sent one registered letter to The Works and tried to talk to them on four different occasions before filing her court action. The Works did not reply.

Ms. Angeli's claim: She paid $35.00 to a professional to install the speakers. It is reasonable to expect the speakers to be installed properly and the workers should have informed her about the need for the protective cups. Reasoning analogically, she told the judge, "If you pay a dentist to fill a tooth, you expect the tooth to be filled properly."

The Works' claim: Ms. Angeli's claim is unreasonable. She did not request installation of the cup and no protective cup had been over the speakers while she had been in Ohio.

APPENDIX D

SMALL CLAIMS COURT OBSERVATION ASSIGNMENT

Each class member is required to visit the small claims court five times during the quarter. On three of those occasions, the class will visit the court together. The remaining two times the student is free to select any time to observe the small claims court. Please try and visit the court when different judges are presiding. Please complete a five to ten-page paper on your observations. The following questions are provided to help focus your paper. Obviously, the questions are not totally comprehensive but are intended as a starting point for your analysis.

I. The judge:

A. Did the judge allow the plaintiff and defendant to complete their case?

B. Did the judge enter into the inquiry process?

C. In your mind, what attitude does the judge hold toward the small claims court?

D. In cases of default did the judge require a prima facie case?

E. If a decision was rendered by the judge at the time, do you agree with the judgment?

F. If no decision was announced by the judge, what do you think will be the final decision?

II. The plaintiff:

A. What nonverbal elements helped or hindered the plaintiff?

B. Did the plaintiff construct and document his/her case properly in your estimation?

C. Did the plaintiff deliver the case well?

III. The defendant:

A. What nonverbal elements helped or hindered the defendant?

B. Did the defendant construct and document the case properly?

C. Did the defendant deliver his/her case well?

IV. General comments:

A. Generally, how long did each small claim case last?

B. What constitutes reasonable proof in small claims court?

C. Were the claims presented related to torts, contracts, or unlawful detainers?

D. How did witnesses present their testimony?

E. Did proof requirements vary from cases to case? If so, how?

F. Could the cases have been solved more equitably in some other manner?

APPENDIX E

BRIEFING AND ANALYZING COURT ARGUMENT ASSIGNMENT

The following California appeal cases are on reserve in the library. Please select two cases and write legal briefs using the supplied format. The point of this exercise is to prepare a document that condenses a long legal paper into a short, concise statement of the facts, rule of law, and reasoning for that rule of law. In the last portion of the brief please analyze the type of reasoning used by the justices in the decision.

The Cases

1. Lee v. Small Claims Court, 34 C.A. 2d 1

   This case deals with the need for proper notice of judgment in small claims.

2. Superior Wheeler Cake Corporation v. Superior Court, 203 Cal. 384

   The contention of the case is that a discrimination results by withholding the right of appeal from the plaintiff while conceding it to the defendant.

3. O'Kuna v. Small Claims Court, 81 Cal. App. 588

   An exception to the general rule of appeal exists where judgment is entered against a defendant without giving proper notice.

4. Sanderson v. Niemann, 17 Cal. 2d 563, 574

   Confers upon a married woman a separate right of action to sue in her own name for damages or injuries to her person.

5. Los Angeles Bond, etc. v. Superior Court, 1 Cal. App. 2d 635

   A conclusion of a court may be wrong but does not make its action in excess of its jurisdiction.

6. Pacific Dry Goods Co. v. Superior Court, 9 Cal. App. 2d 707

   Dismissal is mandatory when the appealing party fails to bring an appeal to trial in the superior court within one year.

7. Merchants Service Co. v. Small Claims Court, 35 Cal. 2d, 109, 113

   Prohibits the filing of a claim in the small claims court by any and every assignee.

8. Hughes v. Municipal Court, 200 Cal. 215

   The small claims court was created primarily to avoid wasteful litigation and to reduce to a minimum costs of trial in cases where the demands are small.

9. City of Alturas v. Superior Court, 36 C.A. 2d 457

   A defendant appealing a judgment of the small claims court shall pay to the plaintiff an attorney's fee if the final judgment is rendered against the defendant.

10. Lee v. Small Claims Court, 46 C.A. 2d 530

    A small claims court exceeds its jurisdiction in rendering judgment in favor of a personal representative of a deceased. No substitution is permitted.

Format

1. Citation--This identifies the case by name, volume, reporter series, page number, and year of the decision.

2. Facts--Provide the basic information as to why the case is in the court, indicate the law or laws that were broken, the issues raised by the case, and the legal history.

3. Decision--Outline the decision of the court briefly. Did they affirm, or reverse the lower court?

4. Reasoning--This is a very important section of the brief. Condense the majority opinion of the court, then each of the concurring opinions, and any dissenting opinion. This section should condense the most significant ideas and arguments presented as well as spell out the basic rule of law adopted by the majority.

5. Critique--This is your analysis of the whole case. Please identify and analyze the type of reasoning used in the case based on the concepts of argumentation discussed in class this quarter.